

EXHIBIT 87

CONFIDENTIAL - L. Rabinowitz

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Chapter 11 Case No.
08-13555(JMP)
LEHMAN BROTHERS HOLDINGS INC., (Jointly Administered)
et al.,

Debtors.

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* * * CONFIDENTIAL * * *

VIDEOTAPED DEPOSITION OF LAURENCE RABINOWITZ

New York, New York

September 4, 2013

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 65270

<p style="text-align: right;">Page 114</p> <p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 of 1.4 million, constitutes a material variation</p> <p>3 within the meaning of Holme v. Brunskill. I</p> <p>4 understand that to be the position.</p> <p>5 Q. Why don't you turn to the forfeiture</p> <p>6 letter. Do you have that?</p> <p>7 A. I have it.</p> <p>8 Q. And I'm particularly interested in</p> <p>9 your understanding as -- of what it is that</p> <p>10 Canary Wharf was giving up and what it retained</p> <p>11 in terms of claims against LBL. What is your</p> <p>12 understanding?</p> <p>13 A. It was giving up no claim against LBL</p> <p>14 under the contract at all. That's clear from</p> <p>15 the proviso to paragraph 4. What it appears to</p> <p>16 have been giving up is the possibility of a</p> <p>17 claim for an administrative expense beyond 1.5</p> <p>18 million.</p> <p>19 Q. Okay.</p> <p>20 A. I don't know whether there was a claim</p> <p>21 which went beyond 1.5 million.</p> <p>22 Q. All right. And looking at the proviso</p> <p>23 that's on the carryover paragraph that's on page</p> <p>24 5. It says, "provided that LBL agrees that we</p> <p>25 and/or CWML" -- I guess that's Canary Wharf in</p>	<p style="text-align: right;">Page 115</p> <p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 both cases -- "may claim against LBL as an</p> <p>3 unsecured creditor for any unpaid rent and</p> <p>4 estate charge and any other sums falling due</p> <p>5 under the lease up to the date of forfeiture,"</p> <p>6 which you understood to be December 10, 2010,</p> <p>7 correct?</p> <p>8 A. Yes, correct.</p> <p>9 Q. Is there any reference to any amounts</p> <p>10 that might otherwise have fallen due following</p> <p>11 forfeiture?</p> <p>12 A. None of the proviso deals with claims</p> <p>13 for unpaid rent and estate charges falling due</p> <p>14 under the lease up to the date of forfeiture.</p> <p>15 Q. Do you know why the draftsman of this</p> <p>16 document did not expressly preserve a claim</p> <p>17 against LBL for rents or other amounts that</p> <p>18 would have fallen due after the date of</p> <p>19 forfeiture?</p> <p>20 A. I don't know why the draftsman drafted</p> <p>21 this in the way that he or she did.</p> <p>22 Q. Looking again at Schedule 4 to the</p> <p>23 lease, which is Exhibit 3, is it fair to</p> <p>24 characterize the language in 6(g) as a catchall?</p> <p>25 A. You could describe it as a catchall.</p>
<p style="text-align: right;">Page 116</p> <p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 It's plainly intended to ensure that whatever</p> <p>3 might otherwise release the surety should not do</p> <p>4 so, say where you have a release under seal.</p> <p>5 Q. I can show you the language of Mr.</p> <p>6 Millett's opinion if you want, but -- well, why</p> <p>7 don't we do that.</p> <p>8 (Exhibit 106, Initial Declaration of</p> <p>9 Richard Millet, Q.C., marked for</p> <p>10 identification, as of this date.)</p> <p>11 BY MR. ISAKOFF:</p> <p>12 Q. We've marked as Exhibit 106 Mr.</p> <p>13 Millett's first opinion in this case, and I'd</p> <p>14 ask if you would turn to paragraph 62 on page</p> <p>15 28, which is where he discusses paragraph 6(g),</p> <p>16 and he says, "As to paragraph 6(g), this is a</p> <p>17 very widely drawn catchall," which I think you</p> <p>18 agree with; is that correct?</p> <p>19 A. It's not an unreasonable way of</p> <p>20 describing it.</p> <p>21 Q. It say, "English courts have been very</p> <p>22 loath to allow creditors to use them to fix</p> <p>23 guarantors with liability that they otherwise</p> <p>24 would not have had," and he cites the West</p> <p>25 Horndon case. Do you agree with him?</p>	<p style="text-align: right;">Page 117</p> <p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 A. I think he's stating the proposition</p> <p>3 very widely. The West Horndon case is an</p> <p>4 example of a case in which the court looked at a</p> <p>5 provision which was an anti-discharge provision</p> <p>6 which was widely drawn, and concluded that it</p> <p>7 had to be interpreted in a way which was limited</p> <p>8 in the context of that case, but that was very</p> <p>9 much as a result of the other provisions in that</p> <p>10 case.</p> <p>11 I don't -- I'm not sure I would infer</p> <p>12 from that in the way that he does that there's</p> <p>13 some general proposition that you shouldn't give</p> <p>14 the words the meaning that they have. In my</p> <p>15 view, the English court would give the words the</p> <p>16 meaning that they have.</p> <p>17 Q. I know we -- I asked you, maybe</p> <p>18 without reference -- well, I know I asked you</p> <p>19 without reference to the proviso of the</p> <p>20 forfeiture letter as to whether you were aware</p> <p>21 of what claims Canary Wharf had asserted against</p> <p>22 LBL in the administration in the UK.</p> <p>23 Do you know, putting it more</p> <p>24 specifically, whether Canary Wharf has asserted</p> <p>25 any claims against LBL that would be</p>

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<p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 attributable to damages arising from rent</p> <p>3 post-forfeiture?</p> <p>4 A. Against LBL?</p> <p>5 Q. Yes.</p> <p>6 A. I don't have a clear recollection of</p> <p>7 that one way or the other, I'm afraid, sitting</p> <p>8 here.</p> <p>9 Q. Did you ever know?</p> <p>10 A. I probably did know, yes.</p> <p>11 Q. What facts would you need to know in</p> <p>12 order to know whether any of the unpaid rent as</p> <p>13 of the time of forfeiture would have qualified</p> <p>14 as an administration expense under English law?</p> <p>15 A. I would need to know whether the</p> <p>16 administrators were occupying and using the --</p> <p>17 the property which was the subject of the lease</p> <p>18 agreement.</p> <p>19 Q. Would the administrators themselves</p> <p>20 have to occupy it or could it be through</p> <p>21 sub-tenants?</p> <p>22 A. I think there's some English authority</p> <p>23 which says that the fact that they are</p> <p>24 sub-tenants is not relevant to the question of</p> <p>25 whether they're occupying it for the purposes of</p>	<p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 being an administrative expense.</p> <p>3 Q. So there's some authority that it's</p> <p>4 not relevant. Is there any authority that it is</p> <p>5 relevant?</p> <p>6 A. I only have in mind the Goldacre case,</p> <p>7 which says that it's not relevant.</p> <p>8 Q. And are you aware of any contrary</p> <p>9 authority?</p> <p>10 A. Sitting here, none springs to mind.</p> <p>11 Q. Are you an expert in the field of</p> <p>12 insolvency proceedings in the UK?</p> <p>13 A. I wouldn't say I was an expert. I</p> <p>14 have given advice and been involved in giving</p> <p>15 advice in insolvency proceedings, but I</p> <p>16 wouldn't -- I don't mark myself as an expert in</p> <p>17 itself.</p> <p>18 Q. Just to put it more specifically, you</p> <p>19 would not regard yourself as an expert on the</p> <p>20 subject of what it takes to qualify as an</p> <p>21 administration expense under English law such as</p> <p>22 we have just been discussing, correct?</p> <p>23 A. I wouldn't regard myself as qualified</p> <p>24 to claim to be an expert on that area.</p> <p>25 Q. Would you turn to page 27 of your</p>
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<p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 opinion, specifically paragraph 63, and you're</p> <p>3 discussing Mr. Millett's contention that the</p> <p>4 forfeiture letter is arguably a material</p> <p>5 variation within the meaning of Holme v.</p> <p>6 Brunskill, and you say in the second sentence of</p> <p>7 paragraph 63, "Mr. Millett first contends (on</p> <p>8 the basis of two 19th century cases which do not</p> <p>9 appear to have been subsequently cited) that a</p> <p>10 variation to the principal contract imposed by</p> <p>11 statute will discharge the guarantor."</p> <p>12 And my question is whether you believe</p> <p>13 that that is an accurate statement of English</p> <p>14 law?</p> <p>15 MR. DeLEEuw: Objection to form.</p> <p>16 A. Just to be clear, you're asking me</p> <p>17 whether what Mr. Millett says, that a variation</p> <p>18 to the principal contract imposed by statute</p> <p>19 will discharge the guarantor, that is an</p> <p>20 accurate statement of English law.</p> <p>21 Q. Thank you.</p> <p>22 A. What I would say about -- in answer to</p> <p>23 that question is, as Mr. Millett indicates,</p> <p>24 there are two 19th century cases which do</p> <p>25 suggest that that will be the result of a</p>	<p>1 CONFIDENTIAL - L. Rabinowitz</p> <p>2 variation to the principal contract introduced</p> <p>3 by statute. I'm not aware of any authority</p> <p>4 which says that those cases are not good law,</p> <p>5 and it would follow that that is likely to be</p> <p>6 the position in English law.</p> <p>7 Q. Okay. 19th Century cases can still be</p> <p>8 valid under English law, correct?</p> <p>9 A. Well, 19th Century cases, in the</p> <p>10 general terms you have put it, of course they</p> <p>11 can be relevant in English law, but it kind of</p> <p>12 depends on the context of those cases, and in</p> <p>13 particular, since I know this is the subject</p> <p>14 we'll come onto, cases about leases and rents,</p> <p>15 the law has changed a great deal. So you often</p> <p>16 find cases which say something in the 19th</p> <p>17 Century which are no longer applicable today</p> <p>18 because of shifts in the law, which means that</p> <p>19 what is said in those cases is no longer</p> <p>20 accurate.</p> <p>21 Q. So you contend.</p> <p>22 MR. DeLEEuw: Objection. Please just</p> <p>23 ask questions.</p> <p>24 MR. ISAKOFF: Well, I move to strike</p> <p>25 the last as nonresponsive in that case</p>